

# Adams County Legal Journal

Vol. 65

September 8, 2023

No. 19

## IN THIS ISSUE:

JONES V. JONES

# Invest with Experience.

The right financial partner will help you plan for the future and manage investments with you and your family's best interests first and foremost. No need to look further...you've found the right partner at ACNB Bank.

Securities and Insurance Products are: NOT FDIC INSURED • MAY LOSE VALUE • NOT BANK GUARANTEED • NOT A DEPOSIT • NOT INSURED BY ANY FEDERAL GOVERNMENT ENTITY



ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, Edward G. Puhl, Esq., Editor; Dr. B. Bohleke (since 2019), Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 337-9812

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.  
All rights reserved.

## CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on June 15th, 2023, Abreia Kmiecik filed a petition for name change in the Court of Common Pleas of Adams County, Pennsylvania, requesting a decree to change the name of the minor Grayson Robert Lookingbill to Grayson Robert Kmiecik.

The court has affixed September 22, 2023 at 11:00 am in courtroom #4, third floor of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the Petition should not be granted.

09/08

## NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following account with statements of proposed distribution filed therewith have been filed in the Office of Adams County Clerk of Courts and will presented to the Court of Common Pleas of Adams County-Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on 09/22/2023, 08:30am.

BLEVINS—Orphan's Court Action Number – OC-89-2023. Petition for Adjudication/Statement of Proposed Distribution. Estate of WANDA P. BLEVINS, late of Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

9/8 &amp; 9/15

**Chances are, your clients have certain organizations and causes they care deeply about.**

# Show them you get it.

Help your clients bring their dreams to fruition with free philanthropic planning tools and ongoing support from the Adams County Community Foundation.

**Expertise in all areas of gift planning**

**Free, confidential consultations**

**Respect for your client relationships**

**Facilitation of charitable giving in Adams County and beyond**

**To find out more:**

**Contact Ralph M. Serpe, 717-337-0060**  
**rserpe@adamscountycf.org**

 **ADAMS COUNTY**  
**COMMUNITY FOUNDATION**

25 South 4th Street  
Gettysburg, PA 17325  
**www.adamscountycf.org**



**Good for your clients. Good for our community. Good for you.**

DEBRA MARIE JONES v. FREDERICK RAULPH JONES

1. Due to fatal defects apparent on the face of the record and Wife's failure to properly notify Husband's counsel of record regarding her intention to proceed with a divorce under 23 Pa. C.S.A. §3301(d), the Court is constrained to grant Husband's Petition.
2. On Nov. 16, 2020, Wife filed an Affidavit under §3301(d) averring that the parties had lived separate and apart for at least two years and the marriage was irretrievably broken. It is puzzling that Wife chose to proceed in this manner. As Husband had previously filed his §3310(c) Affidavit and Waiver of Notice consenting to a divorce on that ground, and neither party raised any economic claims, the divorce decree would have been granted as requested in Wife's Complaint if Wife had filed her §3301(c) documents along with a Praecipe to Transmit the Record.
3. Husband asserts that Wife committed fraud when she failed to contact Husband's counsel as to Husband's location when Wife filed her request for service by publication. We agree.
4. Even though Wife represented herself during much of the pendency of this case, self-represented status confers no special benefit upon any litigant.
5. Wife's disregard of applicable rules and procedures misled the Court and kept husband and his counsel in the dark as to the *ex parte* resolution of the matter on grounds to which Husband did not consent, preventing a fair submission on the controversy.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, 18-S-989, DEBRA MARIE JONES VS.  
FREDERICK RAULPH JONES

Thomas E. Miller, Esquire, Attorney for Plaintiff  
Daniel S. Topper, Esquire, Attorney for Defendant  
Simpson, J., January 19, 2021

OPINION

The parties (referred to as "Wife" and "Husband", respectively) were divorced by Decree entered on January 19, 2021 on the ground

of irretrievable breakdown pursuant to 23 Pa. C.S.A. §3301(d). Husband filed a Petition to Vacate Divorce Decree on September 15, 2021. Wife filed an Answer to the Petition on October 4, 2021. An evidentiary hearing on was held on November 17, 2021. Briefs were timely filed. Due to fatal defects apparent on the face of the record and Wife’s failure to properly notify Husband’s counsel of record regarding her intention to proceed with a divorce under 23 Pa. C.S.A. §3301(d), the Court is constrained to grant Husband’s Petition.

### FACTUAL BACKGROUND

On September 12, 2021, Wife filed a complaint entitled “COMPLAINT FOR DIVORCE UNDER SECTION 3301(c) or (d) OF THE DIVORCE CODE”. Wife’s Complaint contained two counts which consisted of a request for the Court to grant the divorce under 23 Pa. C.S.A. §3301(c) and a request for incorporation of a marital settlement agreement (MSA). Although the Complaint’s heading reads “Complaint for Divorce under §§3301(c) and (d) of the Divorce Code” and there is an averment that the marriage is irretrievably broken, Wife’s prayer for relief requests the Court to grant the divorce solely on the ground of §3301(c)<sup>1</sup>. Contemporaneously with the filing of her Complaint, Wife filed a separate document entitled “SETTLEMENT AGREEMENT BETWEEN DEBRA MARIE JONES And FREDERICK RAULPH JONES” dated September 10, 2018.<sup>2</sup> Article VI of this marriage settlement agreement (MSA) states that it “shall automatically become null and void” if a final decree of divorce is not entered within one year of the date of execution of the MSA. The parties were self-represented when these documents were prepared and filed. Husband accepted service of the Divorce Complaint, Notice

---

<sup>1</sup> It is common practice for litigants to file a complaint for divorce listing both §§3301 (c) and (d) as grounds for the divorce with a prayer for relief including both grounds. Both sections are no-fault provisions. However, the Pennsylvania Rules of Civil Procedure delineate a distinctly separate process for finalizing a divorce under each of those sections.

<sup>2</sup> The MSA refers to exhibits B, C, and D throughout, but no exhibits are appended to the MSA.

to Defend and Claim Rights, and Notice of Availability of Counseling on September 12, 2018, as noted on the Acceptance of Service form that was filed on September 13, 2018.

On or about November 8, 2018, Husband retained Arthur J. Becker, Jr., Esquire and Becker Law Group, P.C.<sup>3</sup> to represent him in this action. Attorney Becker did not file an Entry of Appearance form with the Prothonotary. See, **Pa. R.C.P. No. 1012**. On November 19, 2018, Attorney Becker filed a second Acceptance of Service of the Complaint in Divorce, with a Certificate of Service attached indicating that Attorney Becker notified Wife in writing of his acceptance of the Divorce Complaint on Husband's behalf. Both of those documents contain Attorney Becker's name and contact information.

On or about December 14, 2018, Attorney Becker wrote a letter to Wife and enclosed blank Affidavit of Consent and Waiver of Notice forms required by §3301(c) for Wife to complete. **Husband's Exhibit C**. On December 19, 2018, Attorney Becker filed Husband's signed Affidavit of Consent and Waiver of Notice pursuant to §3301(c), in which Husband consented to the entry of a divorce decree solely on that ground and waived notice of Wife's intention to finalize the decree on that ground. On February 26, 2019, Wife sent Attorney Becker a letter in which Wife acknowledged that Husband was represented by counsel, made several demands, and stated that if the demands were satisfied, she would execute the §3301(c) Affidavit of Consent and Waiver of Notice forms so that the divorce could be finalized on that ground. **Husband's Exhibit E**. Wife did not receive a response to her letter, which caused her to assume that Husband was no longer represented by counsel.

More than one year elapsed without any activity on the docket. On November 16, 2020, Wife filed an Affidavit under §3301(d) averring that the parties had lived separate and apart for at least two years and the marriage was irretrievably broken. It is puzzling that

---

<sup>3</sup> Collectively referred to as "Attorney Becker" throughout the remainder of the Opinion for ease of reference.

Wife chose to proceed in this manner. As Husband previously filed his §3301(c) Affidavit and Waiver of Notice consenting to a divorce on that ground, and neither party raised any economic claims, the divorce decree would have been granted as requested in Wife's Complaint if Wife had filed her §3301(c) documents along with a Praecepto to Transmit the Record.

Attorney Kevin Robinson entered his appearance on Wife's behalf on November 24, 2020. Attorney Robinson filed a Motion for Service by Publication under Pa. R.C.P. No. 430. and an Affidavit of Diligent Search, apparently seeking to finalize the divorce under §3301(d), despite that Wife's prayer for relief in her Complaint was specifically limited to §3301(c). Although the Affidavit of Diligent Search is extensive, it does not contain an averment that Attorney Becker's office was contacted to ascertain whether he still represented Husband or knew of his current whereabouts.<sup>4</sup> As Wife was aware that Attorney Becker filed documents with this Court, it is reasonable to expect her to have brought that to Attorney Robinson's attention. Not realizing Wife's error, the Court granted the request for special service. Proofs of publication were appended to the Praecepto to Transmit Record. The notice that was published was in the form of a notice to defend. The notice did not contain a §3301(d) counter-affidavit, any deadline for a response, or an indication of when the Praecepto to Transmit would be filed with the Court, as required to complete a §3301(d) divorce. **Pa. R.C.P. No. 1920.73.**

On January 14, 2021, Wife filed a Praecepto to Transmit Record. The Praecepto was signed by Wife instead of Attorney Robinson<sup>5</sup>. The Praecepto to Transmit Record contains several defects on its face. The date and method of service are incorrect (service was effectuated by Husband's self-represented acceptance of service dated September 12, 2018; not by certified mail on September 10,

---

<sup>4</sup> Husband acknowledged that he had moved to Tennessee.

<sup>5</sup> Attorney Robinson remained Wife's counsel of record until October 27, 2021, when Attorney Thomas E. Miller entered his appearance on Wife's behalf.

2018 as indicated on the Praecipe). Furthermore, the date of execution and filing of the §3301(d) affidavits is incorrect. **Id.**

### DISCUSSION

“A motion to vacate a decree or strike a judgment alleged to be void because of extrinsic fraud, lack of jurisdiction over the subject matter or a fatal defect apparent upon the face of the record must be made within five years after the entry of the final decree.” **23 Pa. C.S.A. §3332.**

The Pennsylvania Superior Court has defined the term “extrinsic fraud” as follows:

By the expression “extrinsic or collateral fraud is meant some act or conduct of the prevailing party which has prevented a fair submission of the controversy. Among these are the keeping of the defeated party away from court by false promise of compromise, or fraudulently keeping him in ignorance of the action.

*Fenstermaker v. Fenstermaker*, 502 A.2d 185, 188 (Pa.Super. 1992)

Husband asserts that Wife committed fraud when she failed to contact Husband’s counsel as to Husband’s location when Wife filed her request for service by publication. We agree. Although filing a written entry of appearance form pursuant to **Pa. R.C.P. No. 1012** is a best practice because it triggers the Prothonotary’s Office to note the attorney’s appearance in the docket<sup>6</sup>, the law is clear that it is not required. The applicable rule states, in pertinent part:

#### **Rule 1012. Entry of Appearance. Withdrawal of Appearance. Notice**

---

<sup>6</sup> Filing an Entry of Appearance form ensures that the attorney’s representation of the party will be noted on the docket. It is also a best practice for an attorney to review the docket entries before proceeding with representation of a client who previously commenced suit as a self-represented litigant. In this case, however, Attorney Becker’s representation of Husband was apparently never noted on the docket, as evidenced by the Rule 236 notice of judgment lodged in the record, so that information could not have been gleaned by Wife’s counsel in that manner.

A party **may** enter a written appearance which shall state an address at which pleadings and other legal papers may be served in the manner provided by Rule 440(a)(1) and a telephone number. The appearance may also include a telephone facsimile number as provided in Rule 440(d). Such appearance shall not constitute a waiver of the right to raise any defense including questions of jurisdiction or venue. Written notice of entry of an appearance shall be given forthwith to all parties.

**Note: Entry of a written appearance is not mandatory.**

**Pa. R.C.P. No. 1012** (emphasis added). Moreover, our appellate Courts have previously held that entry of a written appearance is not required if the pleadings provide sufficient information to notify parties where legal papers may be served. See, **Fleck v. McHugh**, 361 A.2d 410, 413 (Pa. Super. 1976); see also, **Monaco v. Montgomery Cab Co.**, 208 A.2d 252 (Pa. 1965) (filing of appearance may serve purpose of providing name and address within county where papers may be served). Attorney Becker's Acceptance of Service and attached Certificate of Service, filed on November 18, 2018, qualify as a written entry of appearance on Husband's behalf. Upon entering an appearance, an attorney may not be excused from representation of a client without leave of Court, absent consent of the client or simultaneous entry of appearance by another attorney. **Pa. R.C.P. No. 1012**. Thus, Attorney Becker became Husband's counsel of record when he filed an Acceptance of Service form with his contact information, and Attorney Becker remained Husband's counsel of record at the time the motion for service by publication was filed and at the time the divorce decree was entered. Pa. R.C.P. No. 440 requires service for all legal papers other than original process to be made by leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party. **Id.** Consequently, it was mandatory for Wife and her counsel to contact Attorney Becker and serve him with all legal documents associated with this case, including those necessary for the completion of a §3301(d) divorce. Even though Wife represented herself during



much of the pendency of this case, self-represented status confers no special benefit upon any litigant. “To the contrary, any person choosing to represent [her]self in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be h[er] undoing.” **Wilkins v. Marsico**, 903 A.2d 1281, 1284-1285 (citations omitted). Wife’s disregard of applicable rules and procedures misled the Court and kept husband and his counsel in the dark as to the *ex parte* resolution of the matter on grounds to which Husband did not consent, preventing a fair submission on the controversy. As there are fatal defects upon the face of the record and the proper service and procedure for a 3301(d) divorce was not followed (and arguably not properly pled in the first place), we need not reach the merits of Husband’s other arguments.

Accordingly, the attached Order shall be entered vacating the Decree.

#### ORDER OF COURT

AND NOW, this 17<sup>th</sup> day of March 2022, after a hearing and in accordance with the attached Opinion, it is ORDERED that the Divorce Decree dated January 19, 2021 is VACATED.

**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

**FIRST PUBLICATION****ESTATE OF MELVIN L. BURCHETTE, JR., DEC'D**

Late of Hamilton Township, New Oxford, Adams County, Pennsylvania  
 Executrix: Cynthia M. Burchette, 150 Pine Hill Road, Dover, PA 17315  
 Attorney: John A. Wolfe, Esq., Wolfe, Rice, & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF LARRY WILLIAM HERRING, DEC'D**

Late of Pikesville, Baltimore County, MD  
 Executrix: Sheirazada J. Mutreja, 12 Queensbridge Ct., Apt. F, Cockeysville, MD 21030  
 Attorney: Justin S. Alex, Esq., 63 N. Main St., Ste. K, Stewartstown, PA 17363  
 410-638-6222

**ESTATE OF ALAN H. SHIMER, DEC'D**

Late of Gettysburg Borough, Adams County, Pennsylvania  
 Executor: A. Timothy Shimer, 16 Blossom Lane, Littlestown, PA 17340  
 Attorney: John A. Wolfe, Esq., Wolfe, Rice, & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF JEANETTE K. SNAPP, DEC'D**

Late of Littlestown Borough, Adams County, Pennsylvania  
 Administratrix: Tammy Schaeffer, 181 South Columbus Avenue, Littlestown, PA 17340  
 Attorney: John A. Wolfe, Esq., Wolfe, Rice, & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF DAWN A. STOUTD a/k/a DAWN ANTHONY STOUTD, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania  
 Executor: James A. Stoudt c/o Aevitas Law, PLLC, 275 Hess Blvd., Suite 101, Lancaster, PA 17601  
 Attorney: Neil R. Vestermark, Esq., Aevitas Law, PLLC, 275 Hess Blvd., Suite 101, Lancaster, PA 17601

**SECOND PUBLICATION****ESTATE OF JASON P. BROOKS, DEC'D**

Late of Germany Township, Adams County, Pennsylvania  
 Administratrix: Angela Brooks, 1040 Teeter Road, Littlestown, PA 17340  
 Attorney: John A. Wolfe, Esq., Wolfe, Rice, & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF VAN A. COLLEY, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania  
 Administratrix: Morgan Elson, 11101 Dumbarton Drive, Dunkirk, MD 20754  
 Attorney: Bernard A. Yannetti, Hartman & Yannetti, Inc., Law Office, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF CHERYL F. ENGEL a/k/a CHERYL FRANCES ENGEL, DEC'D**

Late of Littlestown Borough, Adams County, Pennsylvania  
 Executor: Todd Haynie, 6559 Davis Road, Mount Airy, MD 21771  
 Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

**ESTATE OF DONALD G. KUHN a/k/a DONALD GARY KUHN, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania  
 Co-Executrices: Cindy L. Lawver, 6373 Ninth View, Fayetteville, PA 17222; Diane Z. Fox, 20705 Ashburn Valley Court, Ashburn, VA 20147  
 Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

**ESTATE OF JOHN ROBERT LUNTZ, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania  
 Administrator: Garrett Luntz, 1109 Barlow Two Taverns Road, Gettysburg, PA 17325  
 Attorney: John J. Murphy III, Esq., Patrono & Murphy, LLC, 28 West Middle Street, Gettysburg, PA 17325

**ESTATE OF VIRGINIA M. McCLEAF, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania  
 Personal Representatives: Shirley A. McCleaf, 75 White Run Lane, Gettysburg, PA 17325; David M. McCleaf, 7 Brysonia School Road, Biglerville, PA 17307  
 Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

**ESTATE OF MILDRED M. MCGLAUGHLIN, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania  
 Co-Executrices: Karen L. Fitz, Gina M. McGlaughlin, and Carole A. Ditch, c/o R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201  
 Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

**ESTATE OF ISAAC L. SANTOS, DEC'D**

Late of Butler Township, Adams County, Pennsylvania  
 Co-Executrices: Melanie L. Donovan, 5203 Garner Lane, Merriam, KS 66203; Julie A. Lindaberry, 648 Locke Heights Road, Bangor, PA 18013  
 Attorney: Bernard A. Yannetti, Hartman & Yannetti, Inc., 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF VIRGINIA A. WARNER, DEC'D**

Late of East Berlin Borough, Adams County, Pennsylvania  
 Executor: John R. Warner, c/o CGA Law Firm, P.C., 106 Harrisburg Street, P.O. Box 606, East Berlin, PA 17316  
 Attorney: Sharon E. Myers, Esq., CGA Law Firm, P.C., 106 Harrisburg Street, P.O. Box 606, East Berlin, PA 17316

Continued on page 11

**THIRD PUBLICATION****ESTATE OF DONALD CHRISTIAN  
WALSH, DEC'D**

ESTATE OF FAYE M. BAKER, DEC'D  
Late of Carroll Valley Borough, Adams  
County, Pennsylvania  
Co-Executrices: Brenda M. Riley, 119  
Gentry Court, Palmyra, PA 17078;  
Donna K. Schadel, 122 Jacks Mountain  
Road, Fairfield, PA 17320  
Attorney: John A. Wolfe, Esq., Wolfe,  
Rice & Quinn, LLC, 47 West High  
Street, Gettysburg, PA 17325

Late of Franklin Township, Adams  
County, Pennsylvania  
Administrator: Brendan Banford, c/o  
Trinity Law, 1681 Kenneth Road, Suite  
2, York, PA 17408  
Attorneys: Patrick J. Schaeffer, Esq., and  
Laura E. Bayer, Esq., Trinity Law, 1681  
Kenneth Road, Suite 2, York, PA  
17408

**ESTATE OF DAVID W. COSHUN, DEC'D**

Late of Straban Township, Adams  
County, Pennsylvania  
Executrix: Geraldine D. Lohuis, 125  
Cavalry Field Road, Gettysburg, PA  
17325  
Attorney: John A. Wolfe, Esq., Wolfe,  
Rice & Quinn, LLC, 47 West High  
Street, Gettysburg, PA 17325

**ESTATE OF PATRICIA CARR  
FERGUSON, DEC'D**

Late of Leesburg Borough, Loudoun  
County, Virginia  
Administrator: Mark E. Ferguson, c/o  
Gates & Gates, P.C., 250 York Street,  
Hanover, PA 17331  
Attorney: Rachel L. Gates, Esq., Gates &  
Gates, P.C., 250 York Street, Hanover,  
PA 17331

**ESTATE OF RUTHANN SELBY, DEC'D**

Late of Conewago Township, Adams  
County, Pennsylvania  
Executrix: Deborah A. Greenholt, c/o  
1147 Eichelberger Street, Suite F,  
Hanover, PA 17331  
Attorney: Ann C. Shultis, Esq., Salzmann  
Hughes, P.C., 1147 Eichelberger  
Street, Suite F, Hanover, PA 17331

**ESTATE OF FLORENCE M. SMITH,  
DEC'D**

Late of Straban Township, Adams  
County, Pennsylvania  
Administrator: Ronald C. Smith, 372 E.  
Water Street, Gettysburg, PA 17325  
Attorney: John J. Murphy III, Esq.,  
Patrono & Murphy, LLC, 28 West  
Middle Street, Gettysburg, PA 17325

